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SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

No. 897

PETER SKONTOS, also known as **Panagiotis Skoundrianos**,
Petitioner,

vs.

JOHN C. GEKAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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IN THE

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No.

PETER SKONTOS, also known as **Panagiotis Skoundrianos**,
Petitioner,

vs.

JOHN C. GEKAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

The Petitioner, Peter Skontos, also known as Panagiotis Skoundrianos, prays that a Writ of Certiorari be issued to review the final judgment of the Illinois Supreme Court, entered in the above entitled case on January 22, 1962, dismissing the appeal.

OPINION BELOW.

No opinion was rendered by the Illinois Supreme Court.

DOCUMENTS AND PAPERS TRANSMITTED WITH PETITION.

1. Certified copy of Abstract of Record with nine additional copies.

2. Certified copy of Brief. No Brief was filed by respondent.

3. Certified copies: Of Motion filed by respondent to dismiss appeal; Objections and Counter-Suggestions of petitioner.

4. Certified copy of the judgment of the Illinois Supreme Court, entered on January 22, 1962 (Appendix A, *infra* pp. 1-2).

JURISDICTION.

The judgment of the Supreme Court of the State of Illinois, dismissing the Appeal, was entered on January 22, 1962 (Appendix A, *infra* pp. 1-2). This case was appealed from the Appellate Court of Illinois, First District. It was there heard on transfer from the Supreme Court of Illinois (Abst. 63; App. Court Rec. 2-3, 6-7, 13). The Opinion of the Appellate Court, filed October 16, 1961, is reported at 32 Ill. App. 2d 330, 177 N.E. 2d 873. It appears also as Appendix "A" (pp. 59-66) in the certified copy of the Brief transmitted with this Petition.

A "Memorandum Opinion" filed by the state trial court on March 21, 1960, appears in the Abstract pp. 54-61. On that day the said court, on the motion of respondent "for judgment on the pleadings", dismissed petitioner's suit and ordered that he "go hence without day and take nothing by his suit."

The jurisdiction of this Court is invoked under 28 U.S.C.A. Sec. 1257(3).

Article VI, Sec. 11, of the Constitution of the State of Illinois, provides:

> "After the year of our Lord one thousand eight hundred and seventy-four appellate courts, of uniform organization and jurisdiction, may be created in districts formed for that purpose, to which such appeals and writs of error as the General Assembly may provide, may be prosecuted from circuit and other courts, and from which appeals and writs of error shall lie to the Supreme Court, in all criminal cases, and cases in which a franchise, or freehold, or the validity of a statute is involved, and in such other cases as may be provided by law."

And Article VI, Sec. 8, of the Constitution of the State of Illinois provides:

> "Appeals and writs of error may be taken to the Supreme Court held in the grand division in which the case is decided, or by consent of the parties, to any other grand division."

The Legislature provided for such appeals by the enactment of Sections 74, 75, 76, 77 of Chap. 110, of the Illinois Revised Statutes (1959-1961). Section 74 thereof provides:

> "(1) Every order, determination, decision, judgment or decree reviewable by the Supreme or Appellate Court of this State is subject to review by notice of appeal. The review shall be designated an appeal and constitutes a continuation of the proceeding in the trial court. The appeal presents to the reviewing court all issues which heretofore have been presented by appeal and writ of error."
>
> * * *
>
> "(3) Every order, determination, decision, judgment or decree of the Appellate Court heretofore reviewable by the Supreme Court by writ of error shall hereafter be reviewable only by appeal. The appeal,

shall be perfected by notice of appeal filed with the Clerk of the Appellate Court within 40 days after the order, determination, decision, judgment or decree of the Appellate Court becomes final, either through denial of a petition for a hearing or the expiration of the time within which a petition for rehearing might have been filed." * * * *

"No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional. The appeal may be taken by any person heretofore entitled to sue out a writ of error. It presents to the Supreme Court all issues heretofore presented by writ of error, and constitutes a continuation of the proceeding in the Appellate Court. All steps subsequent to the filing of the notice of appeal shall be as provided by rule."

And Section 75 thereof provides:

"(1) Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold or the validity of a statute or a construction of the constitution is involved, * * *".

Section 76(2) thereof provides:

"An appeal is perfected when the notice of appeal is filed in the lower court. After being perfected no appeal shall be dismissed without notice, *and no step other than that by which the appeal is perfected is jurisdictional.*". (Emphasis added.)

And Section 77 thereof provides:

"(1) Appeals shall lie to the Appellate or Supreme Court, in cases in which any form of review may be allowed by law, to review the final judgments, orders or decrees of the circuit court, the superior court of Cook County, the county courts, the city courts and other courts whose judgments, orders and decrees are reviewable therein, under such limitations and conditions as may be imposed by law and subject to rules."

From the final judgment of the Illinois Supreme Court, after the taking of the appeal in the above entitled case, petitioner has no further appellate remedy under the laws of the State of Illinois.

QUESTIONS PRESENTED.

1. Whether the judgment of the Illinois Supreme Court dismissing petitioner's appeal on respondent's motion alleging conclusions only, violates the Due Process Clause of the Fourteenth Amendment.

(i) Where an appeal from the Appellate Court's Decision is a Constitutional as well as Common Law right. (Article VI, Sections 8, 11, of the Constitution of the State of Illinois; Section 74(3), Chap. 110, Illinois Revised Statutes (1959-1961), quoted on pages 3, 3-4 of this Petition and adopted here by reference.

2. Whether the judgment of the Illinois Supreme Court dismissing petitioner's appeal on such motion of the respondent violates the Due Process and Equal Protection of the Law Clause of the Fourteenth Amendment.

(i) Where the Appellate Court's Decision affirmed the dismissal of petitioner's cause of action by the state trial court, which did not hear evidence and denied petitioner's right to trial by jury. (Abst. 51, 61; Rec. 194, 239).

(ii) Where the Decision of the Appellate Court negates and violates Section 19, Article II, of the Illinois Constitution which provides:

> "Every person ought to find a certain remedy in the law for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay."

(iii) Where the Appellate Court's Decision affirmed the state trial court's dismissal of petitioner's cause of action on respondent's motion which did not specify any grounds whatever. (Abst. 51; Rec. 194).

(iv) Where the Appellate Court's Decision holds that respondent had the right to decide that his client, petitioner herein, was insane or incompetent and to refuse to pay over client's money.

(v) Where the state Appellate Court's Decision holds that the respondent, while refusing to pay over client's money, had the right to file a petition in the Probate Court to adjudicate the petitioner, his then client, insane and incompetent, without the jurisdictional Notice and without a hearing.

(vi) Where said Appellate Court's Decision holds that Section 265(113) of Chapter 3, Illinois Revised Statutes, 1953, does not require Notice and hearing for an alleged incompetent.

(vii) Where the Appellate Court's Decision holds "that the requirements of due notice and a proper hearing were satisfied", in direct contradiction in the same paragraph of its said Decision that "* * * plaintiff did not receive notice of the application for appointment of a conservator in the Probate Court * * *".

(viii) Where said Appellate Court Decision holds that the record fails to reveal any jurisdictional defect in the proceedings and orders of the County and Probate Courts, in direct contradiction of the complete authenticated Record on Appeal.

(ix) Where the Appellate Court Decision holds that void orders entered without the jurisdictional Notice to petitioner, shown on the face of respondent's own exhibits attached to his Answer, could not be attacked.

(x) Where the Appellate Court's Decision holds that the County and Probate Courts acquired jurisdiction by a mere recital of jurisdictional facts, contrary to what is shown on the face of the Record on Appeal.

(xi) Where the state Appellate and trial court ignored and refused to consider the wrongful and willful detention or conversion of petitioner's money, manifestly shown by respondent's own exhibit "J", attached to his Answer (Abst. 31; Rec. 46), which is contrary to the provisions of Paragraphs 213, 210, 208, Chapter 38, Illinois Revised Statutes, 1951-1961; and Canon 11, of American and Chicago Bar Associations, which provides:

> "Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him."

3. Whether the State of Illinois Supreme Court can ignore the command of the Due Process and Equal Protection of the Laws Clause of the Fourteenth Amendment and deny at will, the safeguards of our constitutional system, required to be extended to all.

(i) Where under the Illinois Constitutional and statutory provisions quoted on pages 3, 3-4 of this Petition and adopted here by reference, no authority existed for such judgment order dismissing the appeal.

(ii) Where such judgment order of dismissal violated also the basic constitutional guarantees of the Illinois Constitution (Sections 1, 2, 5, 19, Article II; and Sections 8, 11, Article VI; and the legislative enactments pertaining to appeals (Sections 74(3), 75(1)(a), 76(2), 77(1), Chapter 110, Illinois Revised Statutes (1959-1961). Sections 1, 2 and 5, Article II, of the Illinois Constitution provide:

> Sec. 1. "All men are by nature free and independent, and have certain inalienable rights—among these

are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed."

Sec. 2. "No person shall be deprived of life, liberty or property without due process of law."

Sec. 5. "The right of trial by jury, *as heretofore enjoyed, shall remain inviolate;* * * *". (Emphasis added.)

(iii) Where the Appellate Court's Decision holds that a copy of an alleged police report attached to respondent's Answer, the authenticity and contents of which are denied in petitioner's Reply (Abst. 38, par. 15; Rec. 177), is evidence of petitioner's alleged mental illness; contrary to the rule of law that the mere attempt to introduce such report as evidence is reversible error.

(iv) Where the Appellate Court's Decision holds:

(1) That the endorsement on the back of the check in question with the words "Pay to the Order of John C. Gekas", is a limited endorsement, without any evidentiary proof whatever.

(2) That the respondent, John C. Gekas, endorsed the check over to "Nikitas Nomikos", which is contrary to the fact manifested on the face of said check attached to respondent's Answer, showing no endorsement signature by said John C. Gekas (Abst. 27; Exh. G-2; Rec. 108).

(3) That the affidavit of a stranger to the suit, Nikitas Nomikos, attached to respondent's Answer, is true, although it contains the patently false statement, that the check in question was "*later endorsed by John C. Gekas, payable to the order of Nikitas Nomikos*" (Abst. 27; Exh. G-1; Rec. 107).

(v) Where the Appellate Court's Decision deprives the petitioner of the protection under the well settled rule of law that the burden is on the respondent, as attorney, fiduciary and movant on the motion for judgment on the pleadings, to show that no fact question exists.

(vi) Where the Appellate Court's Decision holds that the respondent as attorney and fiduciary did not owe his client, the petitioner, an accounting.

(vii) Where the Appellate Court's Decision adopted the comments and argument of the state trial court and of the respondent, as evidence, contrary to what is shown on the face of the Record on Appeal.

(viii) Where the Appellate Court's Decision deprived the petitioner of the protection of Section 32, Chap. 110, Ill. Rev. Stat., 1959-1961, giving petitioner the right to deny and refute, in his Reply, respondent's allegations in his Answer.

(ix) Where the Appellate Court's Decision deprived the petitioner of the protection of Sections 33(3); 35(1); 44(1)(2), 4, Rules 101.12, 101.15(1) of the Illinois Supreme Court, and of Sections 40(1)(2)(3), 42(2)(3), 45(1)(2), Chapter 110, Illinois Revised Statutes (1959-1961).

(x) Where the Appellate Court's Decision holds that the petitioner waived his rights because he did not appeal from the void orders of the County and Probate Courts, while the respondent was withholding and refusing to pay over petitioner's money, and while respondent was representing conflicting interests against his own client, petitioner herein. (Abst. 29, Exh. H-12, 3rd and 5th pars.; Exh. H-13, 4th and 5th pars.; Exh. 15, 1st and 3rd pars.; Rec. 120, 121, 123).

(xi) Where the Appellate Court's Decision holds that respondent's Answer is evidentiary, ignoring the fact that no evidence was heard, and that the verification to said Answer with the words "*and that any and all allegations stated to be on information he believes that each and all such allegations are true*", is insufficient, evasive and a nullity.

(xii) Where the Appellate Court's Decision holding that the respondent had the right to have his own client, petitioner herein, adjudicated incompetent, without Notice and without a hearing, is in direct conflict with the Decision by the same Court, the same Division, on July 24, 1961, *In Re: Oclerich's Estate*, 31 Ill. App. 2d 457, 176 N.E. 2d 549, 550, holding:

> "A proceeding to appoint a conservator of the person of an alleged incompetent is a proceeding *in personam* and is based on the jurisdiction of the person. The status of incompetency can be determined only by a hearing on the petition and the overcoming of the presumption that such person is sane. It is the finding of the court or jury that such person is incompetent that creates the status of incompetency, and it cannot be presumed in order to establish jurisdiction."

And at page 551, the same Appellate Court, same Division holding:

> "However, a finding by a court that it has jurisdiction is overcome when the finding is irreconcilable with the facts disclosed by the record."

(xiii) Where an *ex parte* affidavit by a defendant in another suit, not attached to respondent's Answer, nor filed in the trial court (Abst. 12-23; Rec. 52-88), and no part of the complete authenticated Record on Appeal (Abst. 62; Rec. 245, 248, 250), is considered and accepted as conclusive evidence by the Illinois Appellate Court. (*Skontos* v. *Gekas*, 177 N.E. 2d 873 at page 876, 32 Ill. App. 2d 330).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

A). Amendment XIV to the Constitution of the United States, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B). Article II, Sections 1, 2, 5, 19 (Bill of Rights); Article VI, Section 8 (Supreme Court); Article VI, Section 11 (Appellate Courts), of the Constitution of the State of Illinois, Ill. Rev. Stat. 1961, pp. 9-10, 16, are quoted on pages 7-8, 5, 3 of this Petition and adopted here by reference.

C). Illinois Appellate Practice, Chap. 110, Sections 74(1)(3); 75(1)(a), 76(2), 77(1), Ill. Rev. Stat. 1961, pp. 1241, 1242, are quoted on pages 3-4 of the Petition and incorporated here by reference.

D). Illinois Supreme Court Rules, Chap. 110, 101.15(1), Ill. Rev. Stat. 1961, p. 1249, provides:

> "(1) Affidavits in support of and in opposition to a motion for summary judgment or decree, and affidavits under section 48 of the Civil Practice Act, shall be made on the personal knowledge of the affiants; *shall set forth with particularity* the facts upon which the claim, counterclaim or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affiant relies; *shall not consist of conclusions but of facts admissible in evidence; and shall*

affirmatively show that the affiant, if sworn as a witness, can testify competently thereto. If all of the facts to be shown are not within the personal knowledge of one person, two or more affidavits shall be used." (Emphasis added.)

E). Illinois Civil Practice Act, Chap. 110, Section 48(1)(a) to 48(1)(i) inclusive, specifying all the grounds for involuntary dismissal, and 48(3), 48(6), Ill. Rev. Stat. 1961, p. 1235, provides:

"48. Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit:

"(a) That the court does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a transfer to a court having jurisdiction.

"(b) That the plaintiff does not have legal capacity to sue or that the defendant does not have legal capacity to be sued.

"(c) That there is another action pending between the same parties for the same cause.

"(d) That the cause of action is barred by a prior judgment.

"(e) That the action was not commenced within the time limited by law.

"(f) That the claim or demand set forth in the plaintiff's pleading has been released, satisfied of record, or discharged in bankruptcy.

"(g) That the claim or demand asserted is unenforceable under the provisions of the Statute of Frauds.

"(h) That the claim or demand asserted against defendant is unenforceable because of his infancy or other disability.

"(i) That the claim or demand asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim or demand."

"(3) If, upon the hearing of the motion, the opposite party presents affidavits or other proof denying the facts alleged or establishing facts obviating the grounds of defect, the court may hear and determine the same and may grant or deny the motion. If a material and genuine disputed question of fact is raised the court may decide the motion upon the affidavits and evidence offered by the parties, or may deny the motion without prejudice to the right to raise the subject matter of the motion by answer *and shall so deny it if the action is one at law and a jury demand has been filed by the opposite party in apt time.*" (Emphasis added.)

"(6) The form and contents of said procedure relating to affidavits under this section shall be as provided by rule."

F). Illinois Civil Practice Act, Chap. 110, Sections 40 (1)(2)(3); 42(2)(3); 45(1)(2), Ill. Rev. Stat. 1961, pp. 1233, 1234, provide:

"40.(1) General issues shall not be employed. Every answer and subsequent pleading shall contain an explicit admission or denial of each allegation of the pleading to which it relates.

"40.(2) Every allegation except allegations of damages, not explicitly denied is admitted, unless the party states in his pleading that he has no knowledge thereof to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge, or unless the party has had no opportunity to deny.

"40.(3) Denials must not be evasive, but must fairly answer the substance of the allegation denied."

"42.(2) No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he is called upon to meet.

"42.(3) All defects in pleadings, either in form or substance, not objected to in the trial court are waived."

"45.(1) All objections to pleadings shall be raised by motion. The motion *shall point out specifically* the defects complained of, and shall ask for appropriate relief, such as: that a pleading or portion thereof be stricken because substantially insufficient in law, or that the action be dismissed, or that a pleading be made more definite and certain in a specified particular, or that designated immaterial matter be stricken out, or that necessary parties be added, or that designated misjoined parties be dismissed, and so forth.

"45.(2) If a pleading or a division thereof is objected to by a motion to dismiss or for judgment or to strike out the pleading, because it is substantially insufficient in law, *the motion must specify wherein the pleading or division thereof is insufficient.*" (Emphasis supplied.)

G). Illinois Civil Practice Act, Chap. 110, Sections 32; 33(3); 35(1); 44(1)(2); Illinois Supreme Court Rule 101.12; Section 4; Ill. Rev. Stat. 1961, pp. 1232, 1233, 1234, 1248, 1226-1227, respectively, provide:

"32. • • • If new matter by way of defense is pleaded in the answer, a reply shall be filed by the plaintiff, but the filing of a reply is not an admission of the legal sufficiency of the new matter. Further pleadings may be permitted as required by the court."

"33.(3) Pleadings shall be liberally construed with a view to doing substantial justice between the parties."

"35.(1) • • • In pleadings which are so verfied, the several matters stated shall be stated positively or upon information and belief only, according to the fact. Verified allegations do not constitute evidence except by way of admission."

44.(1) Subject to rules any plaintiff or plaintiffs may join any causes of action, whether legal or equitable or both, against any defendant or defendants";

"44.(2) Any causes of action, counterclaim, third party claim or issue may be transferred at any time, by order of the court, from the law docket to the equity docket, or vice versa, as the nature thereof may require."

Illinois Supreme Court Rule: "101.12 Different breaches of a contract; bond or other obligation, and different breaches of duty, whether statutory or at common law, or both, growing out of the same transaction, or based on the same set of facts, may be treated as a single claim or cause of action, and set up in the same count."

"4. This Act shall be liberally construed, to the end that controversies may be speedily and finally determined according to the substantive rights of the parties. The rule that statutes in derogation of the common law must be strictly construed does not apply to this Act or to the rules made pursuant thereto."

H). Chapter 38, Paragraphs 213, 208, 210, Ill. Rev. Stat. 1951-1961, pp. 1843 (1961), provide:

"213. *If any attorrney at law,* • • • or other person authorized by law to collect money, shall fail or refuse to pay over any money collected by him, less his proper charges, on demand by the person entitled to receive the same, or his agent duly authorized, he shall be fined not exceeding double the amount retained by him, or confined in the county jail not exceeding one year, or both, and be removed from office, and thereafter he

shall be ineligible to be elected or appointed to, or hold any office under the constitution or laws of this state. And if such attorney is an attorney at law, he shall thereafter be forever prohibited from practicing his profession in this state." (Emphasis added.)

"208. * * * 'Convert to his own use' as used in this Act, shall mean the application or use of such money or property in any manner or for any purpose not authorized by the owner thereof, or that he advised, authorized, directed, aided or knowingly consented to such use or application."

"210. . . . if any clerk, *agent*, servant, solicitor, broker, apprentice or officer of *any person*, co-partnership, society or association, *receiving any money, substitute for money or thing of value whatsoever in his fiduciary capacity*, shall embezzle or fraudulently convert or appropriate the same or any part thereof to his own use, or with intent to embezzle, shall take, secrete or otherwise dispose of, or fraudulently withhold, appropriate, lend, invest or otherwise use or apply any money, substitute for money or thing of *value received by him in such fiduciary capacity*, or the portion thereof, belonging to his *principal*, employer or *fiduciary*, without the consent of the company, *person*, co-partnership, society or association *for or on account of which the same was received by him, he shall be deemed guilty of larceny* and shall be punished as provided by the criminal statutes of this state for the punishment of larceny, *irrespective of whether any such officer, agent, clerk, servant, solicitor, broker or apprentice has or claims to have any commission or interest in such money, substitute for money, or thing of value so received by him.*" (Emphasis supplied.)

I). Illinois Mental Health Code, Chap. 91½, Section 5-3, relating to notice, Ill. Rev. Stat. 1961, p. 770, provides:

"The order setting the hearing of the petition shall direct that reasonable notice of the time and place of the holding of the hearing be served upon the person

alleged to be mentally ill, mentally deficient, or in need of mental treatment".

J). Illinois Probate Act, Chap. 3, Sections 113, 117, Ill. Rev. Stat. 1953-1961, pp. 48, 49; Rules of Practice of the Probate Court of Cook County, Illinois, 1953-1955, Rules 8, 31, provide:

§ 113. POWER TO APPOINT CONSERVATOR.] Probate Courts and county courts of counties in which there are no probate courts have the power to appoint conservators as follows:

(a) If a person is adjudged mentally ill or mentally deficient pursuant to the provisions of the Mental Health Code or has been adjudged insane, mentally ill, feeble minded or mentally deficient under any prior law of this state in a county court of any county in this state in which there is no probate court and the person adjudged mentally ill, insane, mentally deficient or feeble minded is a resident of that county, upon the filing of a verified petition by a reputable citizen of this state either before or after the adjudication of mental illness, insanity, mental deficiency or feeble mindedness that court may appoint a conservator for the mentally ill, insane, mentally deficient or feeble minded person without further hearing. The court may require such notice and other proceedings as it deems expedient.

(b) If a person is adjudged mentally ill, insane, mentally deficient or feeble minded in a county court of any county of this state other than the court in which the petition for the appointment of a conservator is filed, or in a court of competent jurisdiction of a foreign state, upon the filing by a reputable citizen of this state of a verified petition and a duly authenticated copy of the record of the adjudication of mental illness, insanity, mental deficiency or feeble mindedness in a county court of any county of this state or in a court of a competent jurisdiction of a foreign state.

the proper court may appoint a conservator for the mentally ill, insane, mentally deficient or feeble minded person without further hearing. If the person is adjudged mentally ill, insane, mentally deficient or feeble minded in a court of competent jurisdiction of a foreign state the court shall require such notice as it deems expedient. In all other cases the court may require such notice and other proceedings as it deems expedient.

(c) Upon the filing of a verified petition by a reputable citizen of this state, the proper court may adjudge a person an incompetent pursuant to this Act and appoint a conservator for him. The court may require such notice of the hearing on the petition as it deems expedient. (Amended by Act approved July 16, 1951, effective Jan. 1, 1952.)

• • •

§ 117. SUMMONS—JURY—PROCEDURE FOR ADJUDICATION OF INCOMPETENCY.] On the filing of a petition for the adjudication of incompetency and appointment of a conservator pursuant to Section 113 (c) of this Act, the court shall set the cause for hearing, and summons directed to the alleged incompetent shall be issued. Service of summons shall be had upon the alleged incompetent at least three days before the return day designated therein by leaving a copy thereof with him personally and informing him of its contents. Upon good cause shown, supported by affidavit, the court may excuse service on him personally and substitute therefor any of the modes of service provided for in other civil cases. On or before the return day designated in the summons or within such further time as the court permits, any party to the proceeding may demand a jury of either six or twelve persons to be impaneled to try the case. If no party demands a jury, the court may hear the case without a jury, in which case the court shall find in its order that no party demanded a jury. The court shall cause the findings of the jury or the court to be recorded at large by the clerk of the court, and unless the court grants a new trial, the court shall enter an order in accordance with the finding.

Rule 8: "Notice of the time and place of hearing on a petition for adjudication of incompetency or for the appointment of a conservator *shall be given to the alleged incompetent* * * *. Five days' notice shall be given to each person entitled to notice who is a resident of this state and ten days' notice shall be given to each person entitled to notice who is not a resident of this state." (Emphasis added.)

Rule 31: "Notice of the hearing on a guardian's or conservator's petition to resign *shall be given* * * * *to the ward,* * * *." (Emphasis added.)

STATEMENT OF THE CASE.

Petitioner's verified Complaint with Jury Demand was filed on May 11, 1959. It states a cause of action for respondent's violation of trust as attorney, against his client, petitioner herein; for wrongful and willful detention or conversion of petitioner's money; corrupt practices; fraud, deceit, and conspiracy to injure, and deprive the petitioner of his civil rights by adjudicating or causing to adjudicate him as incompetent or insane, while the respondent was withholding and refusing to pay over petitioner's money; and for accounting. The essential allegations are set forth in the verified Complaint and Bill of Particulars (Abst. 1-7, 10-12; Rec. 3-8, 44-46).

The respondent filed his Answer (37 pages). It consists of denials, argumentative allegations, interpretations and conclusions, asserting respondent's right to decide that his client, petitioner herein, was insane or incompetent and to refuse to pay over client's money, which was withheld or converted since on to wit: August 6, 1951. Eighty-four documents are attached to respondent's Answer labeled as exhibits. Respondent alleges interpretations contradicting his own exhibits, and repeatedly pleads the statute of limitations. (Abst. 12-33; Rec. 52-170). An insufficient and evasive verification is attached to respondent's Answer. (Abst 23; Rec. 88).

Petitioner's verified Reply was filed, specifically denying respondent's allegations, interpretations and conclusions and refutes the affirmative defenses alleged in respondent's Answer. (Abst. 33-51; Rec. 172-190).

On January 12, 1960, the respondent filed his unverified motion for involuntary dismissal of petitioner's cause of

action, or for judgment on the pleadings or for summary judgment against petitioner. (Abst. 51; Rec. 194). No grounds were specified. On the same day respondent filed a motion to strike petitioner's Reply to the Answer. (Abst. 51; Rec. 196-197). A Notice of respondent's said motions was addressed direct to the petitioner, although he was represented by his attorney of record. (Abst. 53; Rec. 207). Petitioner's motions were filed to strike or deny the above described motions of respondent. (Abst. 51-53; Rec. 199, 201-202).

The respondent abandoned his motion to strike petitioner's Reply. This fact is confirmed by the trial court judge in his Memorandum Opinion, where it is stated: "The defendant, although he filed a motion to strike the reply, or portions thereof, elected to proceed upon his motion for judgment." (Abst. 54; Rec. 230).

On March 21, 1960, the state trial court entered an order on the motion of respondent for judgment on the pleadings, dismissing petitioner's suit at his costs and ordering "that the plaintiff go hence without day and take nothing by his suit". *No evidence was heard.* (Abst. 61; Rec. 239).

The petitioner appealed direct to the Illinois Supreme Court (Abst. 61-62; Rec. 241), and asserted and preserved the constitutional questions involved in this case.

The Illinois Supreme Court transferred the case to the Illinois Appellate Court, First District (Abst. App. Court 63; Rec. 2-3).

On October 16, 1961, the Illinois Appellate Court entered an Order affirming the trial court's judgment order of dismissal (Abst. App. Court 63; Rec. 6-7), and on November 20, 1961, said Appellate Court denied the Petition for Rehearing. (Abst. App. Court 63; Rec. 8-9).

Petitioner then appealed to the Illinois Supreme Court. (Abst. App. Court 63; Rec. 11-13).

On January 22, 1962, the Illinois Supreme Court, dismissed petitioner's appeal from the Appellate Court (Appendix A, *infra* pp. 1-2), on the motion of respondent alleging conclusions only. Petitioner had filed his Objections and Counter-Suggestions. (Certified copies transmitted with Petition).

In petitioner's Brief filed in the Illinois Supreme Court, the jurisdictional grounds are specified and the constitutional questions are raised and asserted. (Certified copy of Brief, pp. 8-12; 4-7; 26-29; 29-37; 43, par. (18); 44-46, par. (19).

They were raised and asserted in petitioner's Objections and Counter-Suggestions to respondent's motion to dismiss the appeal, pp. 1, 3.

Constitutional questions were raised and asserted in petitioner's pleadings in the state trial court. (Abst. 2, par. 4; 3, par. 4(d); 5, par. 4(h); 6, par. 5; 10, par. 4; 34, par. 3; 38, par. 12; 39, par. 16; 40, par. 17; 45, par. 23; 46, par. 23; 47, par. 23; 49, par. 24; 50, par. 25; Rec. 3, 5, 6, 7, 45, 173, 177, 176, 177, 178, 179, 184, 185, 186, 187, 189).

Constitutional questions are inherent in the judgment order of the state trial court dismissing petitioner's cause of action, without hearing any evidence (Abst. 61; Rec. 239); they are apparent on the face of the Record on Appeal; and are inherent in the judgment of the Illinois Supreme Court dismissing petitioner's appeal, *viz.*: disregard and denial of the basic constitutional guarantees of Due Process of Law and Equal Protection of the Laws.

Under the laws of the State of Illinois, petitioner has no further appellate remedy.

REASONS FOR GRANTING THE WRIT.

1. "Upon the state courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the constitution of the United States and the laws made in pursuance thereof, and all treaties made under their authority, as the supreme law of the land, "*anything in the constitution or laws of any state to the contrary notwithstanding*". If they fail therein, and withhold or deny rights, privileges, or immunities secured by the constitution and laws of the United States, the party aggrieved may bring the case from the highest Court of the state in which the question could be decided, to this court for final and conclusive determination." (*Robb* v. *Connelly*, 4 S. Ct. 54, 551, 111 U.S. 624. 28 L. Ed. 542.) (Emphasis added).

"• • • A state may not, by any of its agencies, disregard the prohibitions of the fourteenth amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts, and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law, regard must be had to substance, not to form. This court referring to the fourteenth amendment has said: 'Can a state make anything due process of law which, by its own legislation, it chooses to declare such? To affirm this is to hold that the prohibition to the states is of no avail, or has no application, where the invasion of private rights is effected under the forms of state legislation'. *Davidson* v. *New Orleans*, 96 U.S. 97, 102. The same question could be propounded, and the same answer should be made, in reference to judicial proceedings inconsistent with the requirement of due process of law." (*Chicago, B. & Q. R. Co.* v. *City of Chicago*, 166 U.S. 226; 17 S. Ct. 581, 586.)

All through the proceedings in the state courts the respondent demanded and obtained decisions without permitting inquiry. Such practice was aptly characterized by Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheat. 264, 5 U.S. 82, at page 85:

> "• • • for he who demands decision without permitting inquiry, affirms that the decision he asks does not depend on inquiry".

And at page 106, it is said:

> "The constitution and laws of a state, so far as they are repugnant to the constitution and laws of the United States, are absolutely void."

This Court in *Chaffee v. United States*, 18 Wall. 516, 85 U.S. 908, 912, states:

> "The testimony of living witnesses, personally cognizant of the facts of which they speak, given under the sanction of an oath, in open court, where they may be subjected to cross-examination, affords the greatest security for truth." *Crawford v. Nilan*, 289 N.Y. 444, 46 N.E. 2d 512; *Johnson v. Plodzien*, 31 Ill. App. 2d 222, 227.

Such judgments demanded and obtained by respondent from the Illinois state courts without hearing evidence and without ascertainment of truth, were also characterized in *Hultberg v. Anderson*, 252 Ill. 607, where the Court held (p. 615):

> "A judgment pronounced without any judicial determination of the facts which alone can support such judgment is merely the arbitrary edict of the Judge, and is as much wanting in due process of law as though the party against whom it is entered had received no legal summons. *Chicago, Burlington and Quincy Railroad Co. v. City of Chicago*, 166 U.S. 226; *Fayerweather v. Rich*, 195 *id.* 276."

And this Court in *Smith* v. *Woolfolk*, 115 U.S. 143, 5 S. Ct. 1177, said (p. 1180):

> "For the decree of a court rendered against a party who has not been heard, and has had no opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other court." *Windsor* v. *McVeigh*, 93 U.S. 274.

2. The denial of rights given by the Due Process and Equal Protection of the Laws Clause of the Fourteenth Amendment need not be by legislation. Its provisions are generic in terms and are addressed not only to the states, but to every person, whether natural or judicial, who is the repository of state power. The denial of Due Process may be by the judicial as well as by the executive or legislative branches of the state government. (*Shelley* v. *Kraemer*, 68 S. Ct. 836, 842-843, 844, 846, 847, 334 U.S. 1; *Brinckerhoff* v. *Hill*, 281 U.S. 673, 680 and cases cited; *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U.S. 27, 286; *Scott* v. *McNeal*, 154 U.S. 34, 45.) In *Brinckerhoff*, Mr. Justice Brandeis, said (281 U.S. on p. 278):

> "We are of opinion that the judgment of the Supreme Court of Missouri must be reversed, because it has denied to the plaintiff due process of law—using that term in its primary sense of an opportunity to be heard and to defend its substantive right."

In *Ohio Bell Telephone Company* v. *Public Utilities Commission*, 301 U.S. 292, Mr. Justice Cardozo, said (p.

> "There can be no compromise on the footing of convenience or expedience or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored."

This Court in *Baltimore & O. R. Co.* v. *United States*, 298 U.S. 349, 56 S. Ct. 797, 807-808, held that "The due process clause assures a full hearing before the Court or

other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence and have judicial findings based upon it". (Citing cases). Petitioner was deprived of this right by the state courts.

Through the disguise of filing multitudinous papers labeled "exhibits", without proof of their authenticity, contents and materiality, basic constitutional guarantees were ignored and denied to petitioner, by the state courts. "The truth needs no disguise." (*Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238, 247.) "Manifestly there is no hearing when the party does not know what evidence is offered or considered and is not given an opportunity to test, explain or refute." (*Interstate Commerce Commission* v. *Nashville R.R. Co.*, 227 U.S. 93.)

This Court in *Napue* v. *People of the State of Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 1178, said:

> "The duty of this Court to make its own independent examination of the record when federal constitutional deprivations are alleged is clear, resting, as it does, on our solemn responsibility for maintaining the Constitution inviolate." (Citing cases.) "This principle was well stated in *Nietmoko* v. *State of Maryland*, 340 U.S. 268, 271, 71 S. Ct. 325, 95 L. Ed. 267:
>
> > "'In cases in which there is a claim of denial of rights under the Federal Constitution, this Court is not bound by the conclusions of lower courts, but will reexamine the evidentiary basis on which those conclusions are founded.'"
>
> "It is now so well settled that the Court was able to speak in *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110, 121, 74 S. Ct. 403, 410, 98 L. Ed. 546, of the 'long course of judicial construction which establishes as a principle that the duty rests on this Court to decide for itself facts of constructions upon which federal constitutional issues rest'". (Citing cases.)

In *Williams* v. *Baffy*, 96 U.S. 176, the Court said (p. 183):

> "Any enactment from whatever source originating to which a state gives the force of law is a Statute of the State within the meaning of the clause cited relating to the jurisdiction of this Court. It would be a narrow construction to limit the term to such enactments as have gone through various stages of consideration by the legislatures." *Oyama* v. *State of California*, 68 S. Ct. 269, 270, 332 U.S. 633; *Norris* v. *Alabama*, 294 U.S. 587, 590, 55 S. Ct. 579, 580; *Chicago, B. & Q. R. Co.* v. *City of Chicago*, 166 U.S. 226, 17 S. Ct. 581, 583.

3. "Equal protection of the laws is something more than an abstract right. It is a command which the state must respect, the benefits of which every person may demand. Not the least merit of our constitutional system is that its safeguards extend to all—the least deserving as well as the most virtuous." (*Hill* v. *State of Texas*, 316 U.S. 400, 62 S. Ct. 1159, 1162.)

The respondent, on or about August 16, 1951, decided that his client, petitioner herein, was incompetent and refused to pay over to him the money collected in the settlement of an uncontested claim for money had and received. (Abst. 19-20; Rec. 79-80; Abst. 2-3, par. (b), 10-11; Rec. 4, 44-45). In his Answer to the Complaint he alleges:

> *"and this defendant after his opinion and belief about the mental incapability of the plaintiff was confirmed by the County Court of Cook County and realizing plaintiff's condition, without any consideration, did on September 30, 1953, waive and relinquish any further claim for fees against the plaintiff or his conservator."* (Abst. 22; Rec. 87-88).

The respondent also alleges (Abst. 19; Rec. 79-80):

> "• • • *defendant had a long conversation with him and this defendant from his investigation and inquiries from the relatives of the plaintiff came to believe that it would be to the best interests of the plaintiff not to have any moneys turned over to him* • • •".

Respondent wanted "security" to pay over client's own money. (Abst. 20; Rec. 81).

And on September 28, 1953, the respondent, while he was still withholding and refusing to pay over client's money, filed and presented his own sworn petition in the Probate Court of Cook County, Illinois, without the required jurisdictional notice to petitioner, alleging that Peter Skontos, his client, "*is wholly incapable of managing his estate and is incompetent*" and that he "*is unable to handle his own money and he gives it away though he needs it*". (Abst. 27, 28; Rec. 109, 111). Without a hearing to petitioner, respondent procured an order adjudicating his own client incompetent. (Abst. 28; Rec. 110).

> "It is difficult to believe that in a civilized community there still remain those who, under the guise and sacred name of Justice, will perpetrate such outrages." (*Bailey* v. *Welch*, 307 Ill. App. 230, 232).

> "In the civil rights cases, 1883, 109 U.S. 3, 11, 17, 3 S. Ct. 18, 21, 27 L. Ed. 835, this Court pointed out that the Amendment makes void 'state action of every kind' which is inconsistent with the guaranties therein contained, and extends to manifestations of 'state authority in the shape of laws, customs, or judicial or executive proceedings.' Language to like effect is employed no less than eighteen times during the course of that opinion." (*Shelley* v. *Kraemer*, 334 U.S. 1. 68 S. Ct. 836, 842.)

Mr. Justice Clark, speaking for the majority of the Court in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 81 S. Ct. 856, said (p. 861):

> "But no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be. It is no consolation to an individual denied the equal protection of the laws that it was done in good faith."

And in *United States* v. *Bank of New York & Trust Co.*, 296 U.S. 463, 56 S. Ct. 343, this Court said (p. 348):

> "Upon the state courts, equally with the courts of the union, rests the obligation to guard and enforce every right secured by the Constitution and the laws of the United States whenever those rights are involved in any suit or proceedings before them. *Robb* v. *Connelly*, 111 U.S. 624, 637, 4 S. Ct. 544, 28 L. Ed. 542." *Smith* v. *O'Grady*, 61 S. Ct. 572, 573, 312 U.S. 329.

CONCLUSION.

For the reasons above stated it is respectfully submitted that this Petition for a writ of certiorari be granted.

Respectfully submitted,

PETER S. SABELAS,
30 No. La Salle Street.
Chicago 2, Illinois,
Central 6-1442,
Attorney for Petitioner.

APPENDIX A.

UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January in the year of our Lord, one thousand nine hundred and sixty-two, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice

Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice Ray I. Klingbiel — Justice Byron O. House
Justice Roy J. Solfisburg, Jr.

William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

Be It Remembered, that, to-wit: on the 22nd of January 1962, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Peter Skontos, also known as Panagiotis Skoundrianos,	Appellant	Appeal from Appellate Court First District 59 S 8012 48390
No. 37000 *vs.* John C. Gekas,	Appellee	

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellee to dismiss this

appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

And it is further considered by the Court, that the said appellee recover of and from the said appellant costs by him in this behalf expended, to be taxed, and that he have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 9th day of March, A.D. 1962.

Mrs. Earle Benjamin Searcy
Clerk,

Supreme Court of the State of Illinois.